3
Supreme Court, U.S.
FILED
04 184 AUG 2 - 2004
No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

C.M.C.,

PETITIONER,

versus

G.A.L. and K.L.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

APPENDIX, volume 2

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TABLE OF CONTENTS

People ex. rel. A.J.C., 88 P.3d.599 (Colo 2004) 1

January 3, 2004 Order of Jefferson County District Court Dismissing Custody Petition 94

January 13, 2004 Order of Jefferson County District Court Dismissing Custody Petition 97

October 15, 2003 Judgment of Dismissal of Petition of Adoption entered by Circuit Court of St. Charles County Missouri 100

January 2, 2004 Order of Circuit Court St. Charles County Missouri denying Respondent's Motion to Vacate Judgment and awarding custody of A.J.C. to Petitioner 111

Order of Colorado Supreme Court denying Petition for Rehearing 116

U.S. Const. Art. IV sec 1. 119

U.S. Const. Art. VI sec. 2. 120

28 U.S.C. sec. 1738A
(Parental Kidnaping Prevention Act) 121

Verified Petition for Allocation of Parental Responsibilities.

ii. Jurisdiction Under the UCCJEA

We come now to the modern version of the UCCJA -- the UCCJEA. In 1997, the NCCUSL unanimously endorsed the UCCJEA. Patricia M. Hoff, The ABC's of the UCCJEA: Interstate Child-Custody Practice Under the New Act, 32 Fam.L.Q. 267, 267 (1998). As we mentioned above, our legislature adopted the UCCJEA in 2000, thereby replacing the UCCJA. The UCCJEA was formulated to clarify ambiguities and reconcile conflicting interpretations regarding circumstances under which a state has jurisdiction to make or modify custody orders. Hogan, 26-WTR Fam. Advoc. at 24-25. Colorado's UCCJEA provides clearer standards to guide states in exercising or not exercising original jurisdiction over child custody

determinations. It also, for the first time, enunciates the standard for continuing jurisdiction and clarifies modification jurisdiction.

The prefatory note adopted by our legislature and accompanying the UCCJEA provides a useful tool for fleshing out the differences between it and its predecessor, the UCCJA. The prefatory note to the legislation implementing the UCCJEA in Colorado indicates that the drafters of the UCCJEA sought to revise the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Uniform Child Custody Jurisdiction Prefatory Note, Art. 14, 5 C.R.S. (2003) ("Prefatory Note").

The drafters of the UCCJEA summarized the revisions made to the UCCJA in the Prefatory Note. We likewise summarize those revisions as follows: (1) unlike the UCCJA, the UCCJEA prioritizes

"home state" jurisdiction; (2) the UCCJEA clarifies the parameters for exercising emergency jurisdiction; (3) unlike the UCCJA which failed to clearly enunciate that the decree granting State retained exclusive continuing jurisdiction to modify a decree, the UCCJEA provides for exclusive continuing jurisdiction for the state entering the initial custody decree; (4) the UCCJEA provides greater specificity as to what custody proceedings are covered within its ambit; (5) the UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children; and (6) the UCCJEA provides for other miscellaneous changes to the UCCJA.

The most important and ultimately dispositive provision of the UCCJEA for our purposes is the one

that provides that the UCCJEA "does not govern an adoption proceeding." § 14-13-103, 5 C.R.S. (2003). The Prefatory Note acknowledges that the definition of custody proceedings under the UCCJA was ambiguous. Prefatory Note at § 4. To clarify this ambiguity and to harmonize conflicting decisions around the country, the UCCJEA "includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a 'custody determination.'" Id. (emphasis added).[16]

While the UCCJEA's exclusion of adoptions clarifies the ambiguities created under the UCCJA, this exclusion also creates an obvious gap in the

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[16] The conundrum here is that if we view Missouri as having addressed the custody issue at all, it was only as a part of having recognized that the adoption failed. Hence, the order was a part of an adoption proceeding and the UCCJEA does not apply. If, on the other hand, we view the adoption and custody proceedings as separate proceedings, then Missouri has entered no custody order and Colorado would have initial original jurisdiction.

jurisdictional legislation governing interstate adoptions. See Hoff, 32 Fam.L.Q. at 276-77 ("Because the [Uniform Adoption Act] has not yet been widely adopted, the exclusion of adoption cases from the UCCJEA creates a void in state jurisdictional rules applicable in interstate adoption cases. To avoid the confusion this can be expected to cause, states can either add adoption to the list of covered 'custody proceedings' in [the] UCCJEA . . ., or enact the jurisdictional provisions of the [Uniform Adoption Act] as part of the UCCJEA."). To fill this void, the drafters of the UCCJEA intended that state legislatures also adopt the Uniform Adoption Act (UAA). Specifically, the drafters stated that:

> Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA)

> (1994). Most states will either adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore the jurisdictional provisions governing adoption proceeding [sic] are generally found elsewhere.

Unif. Child Custody Jur. & Enf. Act § 103, cmt., 9 U.L.A. 660-61 (1999).

Section 3-704 of the UAA covers the circumstance we address today as follows:

> If a court denies a petition for adoption, it shall dismiss the proceeding and issue an appropriate order for the legal and physical custody of the minor. If the reason for denial is that a consent or relinquishment is revoked or set aside pursuant to Section 2-408 or 2-409, the court shall determine the minor's custody according to the criteria stated in those sections. If the petition for adoption is denied for any other reason, the court shall determine the minor's custody according to the best interest of the minor.

Unif. Adoption Act (1994) § 3-704, 9 U.L.A. 95-96 (1999) (emphasis added).

Because this case involves Mother's revocation of her consent to the adoption, the provisions of section 2-408 of the UAA would apply. The comments to that provision state in pertinent part:

> This section and Section 2-409 deal with circumstances under which a consent or relinquishment is revoked or may be set aside. Revocation of a consent to a direct placement may occur, without judicial action, under two circumstances. First, a birth parent who executes consent before the minor is 192 hours old can decide to revoke within those 192 hours . . . . This right to revoke is absolute and requires the prospective adoptive parents or their attorney to return the infant to the parent if the infant had been placed with them . . . . Second is when the parent and the prospective adopter mutually agree to revoke the

consent and not proceed with the proposed adoption.

Any other effort to set aside a consent requires judicial action. Until a decree of adoption is issued, a consent will be set aside if the parent proves by clear and convincing evidence that it was obtained by fraud or duress . . . . A finding of fraud or duress is tantamount to a finding that a valid consent never existed and therefore the parent has never agreed to the adoption of the child and the would-be adoptive parents have no basis for retaining custody of the child. The adoption proceedings must come to an end.

Actions to set aside consents for other reasons have less certain outcomes. Even if a parent establishes by a preponderance of the evidence that one or more of the contingencies specified in the consent has occurred -- for example, the other parent's rights have not been terminated -- it does not automatically follow that the parent is entitled to the legal or physical custody of the minor. The Act provides that the court has to take into

account the minor's circumstances at the time consent is set aside. Even though an adoption proceeding may have to be dismissed, the court has to make an order for the minor's care and custody. In making this order, this court must consider not only the status of the birth parent but also the needs and interests of the minor. It is therefore possible under some circumstances for the individuals who sought to adopt the minor to end up with custody of the minor. Much will depend on the relationship between the minor's birth parents, the length of time the minor has been out of their custody, whether independent grounds exist for terminating the rights of either birth parent, the recommendation of the minor's guardian ad litem [appointed in any contested proceeding, Section 3-201], the willingness of the would-be adopters to retain custody even if an adoption is not granted.

Most importantly, the Act does not treat a minor as an object that "belongs" to a parent or would-be parent and has to

> be shifted back and forth in the event "ownership" rights are changed or reinstated. The fact that a birth parent's status as a legal parent may be restored or recognized upon the setting aside of a consent or relinquishment is not tantamount to a determination that the minor must be placed in that parent's custody.

Unif. Adoption Act (1994) § 2-408, 9 U.L.A. 61-62 (1999) (emphasis added).

Thus, the UAA contemplates that when an adoption fails after the child has been with the prospective adoptive parents for some period of time, the court must take into account the best interests of the child in making determinations about continuing placement.[17] The UAA's approach to custody

[17] Section 3-101, the jurisdictional provision of the UAA, mirrors to a large extent the provisions of the UCCJA (not the UCCJEA). Unif. Adoption Act, art. 1, pt. 1, cmt., 9 U.L.A. 66-67 (1999). We observe that it would not direct a different outcome than that which we reach today in balancing the competing interests of Missouri and Colorado.

determinations following a failed adoption is consistent with Colorado's statutory provisions and case law. See § 19-5-104(8), 6 C.R.S. (2003); C.C.R.S., 892 P.2d at 254.

Our General Assembly has adopted the UCCJEA, but not the UAA. The drafters of the UCCJEA intended that the exclusion of adoptions be addressed by enactment of the UAA, which in turn would provide that Colorado should exercise jurisdiction over this dispute in order to determine the best interests of the child.

In summary then, Missouri still follows the UCCJA, which would allow Colorado to exercise jurisdiction if we were to determine, like New Jersey, that the failure to examine the best interests of A.J.C. amounted to a declination of jurisdiction. Colorado has the UCCJEA, which does not apply to adoptions; however, it excludes these proceedings in

reliance upon the expectation that state legislatures will enact the Uniform Adoption Act in its stead. The UAA would direct Colorado to exercise jurisdiction over the Verified Petition for the purpose of reviewing the best interests of A.J.C.

B. The PKPA and ICPC

Within this web of applicable law, we must also recognize and analyze the PKPA and the ICPC.

We conclude that the Parental Kidnapping Prevention Act of 1980 (PKPA or the "Act"), § 28 U.S.C.A. 1738A (2004), does not change the outcome of this case. That Act "imposes a duty on the States to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act." Thompson v. Thompson, 484 U.S. 174, 175-76 (1988); § 28 U.S.C.A. 1738A(a). Under the PKPA, and by virtue of full faith and credit, "[o]nce a State exercises

jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute, § 1738A(g), even if it would have been empowered to take jurisdiction in the first instance." Thompson, 484 U.S. at 177.

When it enacted the PKPA, Congress meant to address the problem of conflicting state custody determinations resulting from the legal vacuum created by inconsistent versions of the UCCJA adopted by the various states; the Act affirmatively implemented full faith and credit requirements applicable to all custody determinations. Id. at 181. Importantly, "[t]he sponsors and supporters of the Act continually indicated that the purpose of the PKPA was to provide nationwide enforcement of custody orders made in accordance with the terms of the UCCJA." Id.

The PKPA does not specifically exclude adoptions. Our courts have previously construed the term "custody determination" under the UCCJA, K.R., 897 P.2d at 900, to include adoption proceedings, as other courts have. See, e.g., E.E.B., 446 A.2d at 876. Thus, for purposes of this opinion, we assume that the PKPA applies to this case.

Accordingly, because another state has already entered a custody determination concerning this child, we inquire not whether we may exercise jurisdiction under the PKPA but whether the first-in time court's exercise of jurisdiction was in accordance with the PKPA and whether that jurisdiction continues. In re Marriage of Zierenberg, 16 Cal.Rptr.2d 238, 241 (Cal. Ct. App. 1992). The PKPA provides that "every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this

section, any custody determination . . . made consistently with the provisions of this section by a court of another state." § 1738A(a). The Act states that a custody determination of another state is made consistently with the PKPA as long as (1) the court of the other state has jurisdiction under the law of that state, § 1738A(c)(1), and (2) at least of one of several listed conditions is met.[18]

As pertinent here, one of those conditions is whether the court in the other state has "continuing jurisdiction" under subsection (d) of the statute. Subsection (d) provides that continuing jurisdiction is to be found wherever the court has jurisdiction

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[18] Broadly stated, those conditions are: (a) the state is the child's home state; (b) no other state would have jurisdiction and it is in the best interests of the child for the state to exercise jurisdiction; (c) the child is physically present in the state and has been abandoned or jurisdiction is necessary because of the threat of mistreatment; (d) no other state would have jurisdiction under (a),(b), or (c); or (e) the court has continuing jurisdiction. § 28 U.S.C.A. 1738A(c)(2) (2004).

under the law of that state and either the child or any person claiming custody to the child remains in that state. § 1738A(d); § 1738A(b)(2). Under this definition, then, the Missouri court has continuing jurisdiction related to the custody order in this case.

Accordingly, under the PKPA, we may not modify that order unless one of the Act's exceptions is satisfied. Subsection (f) of the Act provides that "[a] court of a State may modify a determination of the custody of the same child made by a court of another State, if (1) it has jurisdiction to make such custody determination; and (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination." (emphasis added). Because, as we noted above, Missouri has continuing jurisdiction under the Act, the exception would permit us to exercise our jurisdiction only if Missouri has declined

such jurisdiction.

As the U.S. Supreme Court importantly noted in Thompson, custody orders tend to be in conflict among the states because of "the fact that custody orders characteristically are subject to modification as required by the best interests of the child [and a]s a consequence, some courts doubted whether custody orders were sufficiently 'final' to trigger full faith and credit requirements." Thompson, 484 U.S. at 180. Thus, "[b]ecause courts entering custody orders generally retain the power to modify them, courts in other States were no less entitled to change the terms of custody according to their own views of the child's best interest." Id. Because the right to modify remains with the state entering the first custody by virtue of the best interests of the child, some courts, such as the New Jersey Supreme court in E.E.B., have held that where a state court enters

a custody decree without making a determination of the best interests of the child, it specifically declines its jurisdiction to modify that order. 446 A.2d at 877.

Because that interpretation seems to accord with the purpose of the PKPA, as enunciated by the U.S. Supreme Court, we similarly apply the analysis of E.E.B. here. Consequently, we determine that because Missouri failed to conduct a best interests analysis in issuing its custody decree, it declined jurisdiction to modify that order under section 1738A(f). Thus, we conclude that our exercise of jurisdiction in this case is consistent with the terms of the PKPA.

We are left, then, with the ICPC. The ICPC is an interstate compact, which is in place in both Colorado and Missouri. §§ 24-60-1801 - 1803, 7B C.R.S. (2003); Mo. Ann. Stat. § 210.620 (2003). Unlike the UCCJEA, it specifically applies to

adoptions. Article V of the ICPC contains the jurisdictional mandate. It states in pertinent part that:

> The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted . . . . Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law.

§ 24-60-1802, art. V(a), 7B C.R.S. (2003). Article II of the Compact defines a "sending agency" as "a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any

child to another party state." § 24-60-1802, art. II(b). Mother argues that because the adoption failed, Missouri, as the sending agency, retains jurisdiction over the custody of A.J.C.

First, under Missouri law, the sending agency was not the state of Missouri but rather a person, Laura Sipes. See In re Baby Girl, 850 S.W.2d 64, 69 n.6 (Mo. 1993). Sipes was an intermediary who was designated to assist with the placement of A.J.C. The State Compact Administrator in Missouri identified her as the sending agency by way of a signed document entitled "Interstate Compact Placement Request." As such, Ms. Sipes retained jurisdiction over the child to determine all matters until the child was adopted, became self-supporting or was discharged with the concurrence of the appropriate authority in the receiving state. Such

jurisdiction includes the power to effect or cause the return of the child or his transfer to another location. See § 24-60-1802, art. II(c).

Accordingly, if the sending agency demands that the child be returned to the state where the proceeding began, such determination is entitled to be honored under the ICPC. Both Colorado and Missouri would support such an outcome. See Dep't of Soc. Servs. v. Dist. Court, 742 P.2d at 341-42; see also Baby Girl, 850 S.W. 2d at 69-70.

The problem here, however, is that Sipes has sought no such outcome. Rather, in Sipes' affidavit[19] filed with this court, she specifically states that she does not request the return of A.J.C. Rather, she expresses that it is in the best interests of A.J.C. to

[19] Mother sought to strike the Sipes' affidavit because it was not filed with the trial court. We deny that motion and accept the facts as alleged in the affidavit before this court, but recognize that the trial court may revisit the question of Sipes' position on remand if there is any contrary evidence.

remain in Colorado.

This is more than a mere technicality. It highlights a deficiency in the Missouri proceeding which in turn amplifies the dilemma we face here. The sending agency, in the form of Ms. Sipes, was responsible for sending or causing the child to be sent to Colorado. The court order effectuated that transfer, but the court was not itself responsible for the child as was Ms. Sipes. Ms. Sipes has an ongoing responsibility, by operation of the ICPC and she is not requesting that the child be returned to Missouri. Under its own law, Missouri was initially required to appoint a guardian ad litem for A.J.C. because he was under the age of 18 at the time the adoption was filed. Mo. Rev. Stat. § 453.025 (2003). That GAL would have undertaken the responsibility of conveying to the court in Missouri what A.J.C.'s best interests might be. Based upon the record

before us, we have no evidence that such message was conveyed, or inquiry undertaken.

We have already noted that Missouri, like Colorado, recognizes that in certain situations, a failed adoption does not automatically result in the custody of a child being restored to the natural parent(s). See Baby Girl, 850 S.W. 2d at 69-70. Accordingly, we view Missouri as a state, akin to Colorado, that authorizes, if not requires, an inquiry into the best interests of the child even following a failed adoption. Perhaps because of the absence of a GAL, or perhaps because Ms. Sipes has not requested such an inquiry, it has not occurred. No report or testimony has been offered that would result in the Missouri court making a determination about the ongoing best interests of A.J.C. in light of the failed adoption.

For all of those reasons, we do not view the

ICPC as commanding that Colorado decline jurisdiction over the best interests inquiry, when internal law in Colorado, internal law in Missouri, the UCCJA, and the UAA would all support if not mandate that we proceed.

VI. Conclusion

We conclude that Colorado courts may exercise jurisdiction for purposes of determining custody of the child based upon his best interests. We do not believe our exercise of jurisdiction fundamentally contradicts or ignores the respect we have for our sister state of Missouri. Accordingly, we make our Rule to Show Cause absolute, reverse the district court's order dismissing the Petitioners' Petition and remand this matter for further proceedings consistent with this opinion.

JUSTICE COATS dissents.

JUSTICE COATS, dissenting:

Today, the majority directs the courts of

Colorado to ignore the command of a sister state to return an unadopted baby, born on its soil and placed for adoption according to its laws; and instead to decide for themselves whether the child would be better off in the custody of Colorado residents than in the custody of the child's natural parents in the state of its birth. Following a dizzying discussion of jurisdictional statutes, ultimately failing to resolve their individual applicability, the majority concludes that jurisdiction to determine the fate of the child in this case hinges on the choice of the Missouri attorney for the prospective adoptive parents, acting as an "intermediary" in the adoption process, rather than the courts of her state.

Whatever my reservations about an adoption scheme that permits a natural parent's unilateral withdrawal of consent to adoption months after placement of the child, such laws involve policy choices belonging to another branch of government

and, in this case, to another jurisdiction altogether. In any event, I am much more concerned about the jurisdictional free-for-all that will surely result from the majority's approach and the harm done to children who will be forced to suffer under conflicting custody orders and perpetual jurisdictional disputes. Because I cannot endorse the liberties I believe the majority has taken with the jurisdictional choices of both the Colorado General Assembly and the United States Congress, I respectfully dissent.

Almost a decade ago, following a divided intermediate appellate court ruling, see In re Custody of C.C.R.S., 872 P.2d 1337, 1345-55 (Colo. App. 1993) (Taubman, J., dissenting), a bare majority of this court held that the custody provisions of Colorado's dissolution of marriage act also apply to adoptions unrelated to divorce, permitting the courts of this state to allocate the

custody and care of children to prospective adoptive parents, without the consent of the otherwise fit, natural parents or the relinquishment of their parental rights. See In re custody of C.C.R.S., 892 P.2d 246 (Colo. 1995); see also id. at 259 (Lohr, J., joined by Kirshbaum and Scott, JJ., dissenting); id. at 262 (Scott, J., joined by Kirshbaum, J., dissenting). Whatever the merits of that decision, the general assembly's failure to countermand it in the intervening nine years has left it unchallenged as the controlling law of this jurisdiction.

In its opinion today, a majority of the court seeks to extend that judicial power to interstate placements. It does so by again postulating a distinction between the right of prospective adoptive parents to adopt a child and a separate and independent right for them to be granted legal custody of the child. Because even the majority

concedes that its obligations under the Full Faith and Credit Clause require its deference to Missouri's order denying the adoption, it purports only to permit the Colorado District Court to award the care and custody of the child to Colorado non-parents, without actually permitting adoption of the child or termination of the parental rights of the Missouri parents. As tenuous as the C.C.R.S. rationale may have been in the intrastate context, this court at least had the power to construe Colorado's divorce and adoption statutes in pari materia and discover a controlling legislative intent to locate custody in a third party, despite retention by the natural parents of their parental rights. As the majority's strenuous attempt to extend it makes clear, this distinction between custody and adoptability is simply untenable as a device for acquiring jurisdiction in the context of interstate adoptions.

The applicability of the Full Faith and Credit Clause to the interstate enforcement of child custody orders has long presented vexing problems. See In re Baby Girl Clausen, 502 N.W. 2d 649, 661 (Mich. 1993). In 1968, the National Conference of Commissioners on Uniform State Laws drafted the Uniform Child Custody Jurisdiction Act (UCCJA), which was subsequently adopted in some form by all 50 states and the District of Columbia. See L.G. v. People, 890 P.2d 647, 655 (Colo. 1995). A dozen years later, in 1980, Congress responded to the disparate interpretations of the uniform act and continuing disputes over the enforceability of other states' custody decisions by adopting the Parental Kidnapping Prevention Act (PKPA).[20] The federal PKPA imposed a duty on all states to enforce the custody determinations of other states that are

[20] Pub.L. No. 96-611, §2, 94, Pub. Stat. 3566 (1980).

consistent with the PKPA itself. 28 USC §1738A(a)(2004). In part, however, because the PKPA incorporated state UCCJA law, including its overlapping jurisdictional provisions and its highly ambiguous definition of "custody proceedings," deference to sister state custody orders remained inconsistent. Compare In re Clausen with E.E.B. v. D.A., 446 A.2d 871 (N.J. 1982).

Almost 30 years after promulgating the UCCJA, the National Conference therefore revisited the law of child custody jurisdiction, and in an attempt to "eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA," replaced the UCCJA with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Uniform Child Custody Jurisdiction Prefatory Note, part 1, article 13, title 14, Colorado Revised Statutes (2004). Since its promulgation in

1997, the UCCJEA has been adopted in more than 30 states, including Colorado. See Ch. 320, sec. 1, § 14-13-101 - 403, 2000 Colo. Sess. Laws 1519.

Key among the expressed purposes of the UCCJEA were its clarification of the standards for exercising original jurisdiction over a child custody determination; its enunciation of a standard of continuing jurisdiction; and its clarification of modification jurisdiction. See Uniform Child Custody Jurisdiction Prefatory Note. The accompanying notes to the new, rewritten act also made clear that "the 'best interest' language of the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or otherwise provide that 'best interest' considerations should override jurisdictional determinations or provide an additional

jurisdictional basis." Prefatory Note 5. In order "to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children," the UCCJEA therefore completely eliminated the term "best interests" from its provisions. Id.

While the majority's "best-interest" jurisdictional analysis was at least colorable under the UCCJA, under the UCCJEA it has therefore been completely foreclosed. Unlike the UCCJA, the UCCJEA makes an express distinction between initial and continuing jurisdiction; gives priority of initial jurisdiction to the "home state;" and provides for exclusive, continuing jurisdiction (until the occurrence of specified events) in any state making a child-custody determination. Id. Because the jurisdictional provisions of the UCCJEA were crafted specifically to preclude simultaneous claims of

jurisdiction by more than one state, it is clear under its provisions that a single jurisdiction has priority of jurisdiction. See § 14-13-201.

Although the UCCJEA also provides for the state with priority of jurisdiction to decline to exercise it, in effect creating jurisdiction in another state, it does so only under specific, statutorily defined circumstances. Apart from the misconduct of a party, which may require the state with jurisdiction to decline it, see § 14-13-208, jurisdiction may be declined only for the reason that the court with jurisdiction determines that it would be an inconvenient forum under the circumstances of the case and that another state would be a more appropriate forum. See § 14-13-207. Significantly, under the scheme of the UCCJEA, jurisdiction may be declined only by the state with priority of jurisdiction and, apart from misconduct by a party, it

may do so only by consciously and expressly determining that another state is the more appropriate forum. Id. As distinguished from E.E.B.'s construction of the UCCJA and PKPA, revived here by the majority, the UCCJEA simply does not allow for a determination by a state seeking jurisdiction that another state with priority of jurisdiction has declined to exercise it by omitting to take some action, whether or not that action would have been required by its own law.

The majority, however, largely ignores the UCCJEA, relying on Missouri's failure to adopt it and Colorado's failure to adopt the Uniform Adoption Act (UAA) to suggest that the UCCJEA is either invalid or inapplicable to this situation. The UCCJEA is not an interstate compact, with applicability only to transactions involving co-signing states, but a jurisdictional statute, expressly

defining the limits of this state's jurisdiction over child-custody determinations. See generally Bernadette W. Hartfield, The Role of the Interstate Compact on the Placement of Children in Interstate Adoption, 68 Neb. L. Rev. 292, 295 (1999)(distinguishing interstate compacts from uniform laws). The fact that Missouri continues to abide by a statute that has been expressly repealed by the Colorado legislature has no bearing on the jurisdiction of the Colorado courts. See § 14-13-301("A court of this state shall recognize and enforce a child-custody determination of a court of another state if the other court exercised jurisdiction in substantial conformity with this article or the determination was made under factual circumstances meeting the jurisdictional standards of this article."); Hector G. v. Josefina P., 771 N.Y.S.2d 316, 324 (N.Y. 2003)("Unlike its

predecessor statute, the UCCJEA was made applicable not only to other states but also to all foreign countries, even if the other jurisdictions have not themselves adopted it."); see also In re Marriage of Zierenberg, 16 Cal. Rptr.2d 238 (Cal. Ct. App. 1992).

Similarly, the UCCJEA clearly expresses no intent that states adopting it will also adopt the UAA, nor is it in any way incomplete or lacking in continuity except in conjunction with the UAA. As its comments indicate, the UCCJEA does not govern adoption proceedings because it contemplates that the jurisdictional provisions governing such proceedings will generally be found elsewhere; "[h]owever there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding." See § 14-13-103 (Official Comment). Along with all but one jurisdiction in the

country, neither Colorado nor Missouri has adopted the UAA. See Unif. Adoption Act of 1994 Jurisdictions Wherein Act Has Been Adopted, 9 U.L.A. 11 (2003)(citing the state of Vermont as the only state that has adopted the Act).

Even if the UCCJA governed this dispute, however, for a host of reasons it would not permit the courts of this jurisdiction to determine the custody of the Missouri child in this case. In the first place, the record indicates that as a matter of fact the child had not resided in Colorado with the prospective adoptive parents for a period of six months, and in fact was not even six months old, when the Missouri circuit court denied the adoption and ordered the return of the child.[21] Without the

[21] The child was born in Missouri on April 18, 2003 and was brought to Colorado on April 21, after the Missouri court approved temporary placement with the prospective adoptive parents. On May 15, less than one month later, the court declined to approve termination of parental rights, and on July 25, the birth mother moved to withdraw her consent. On October 15, 2003, six days

authorization of Missouri's order of temporary custody, the child was no longer in the custody of persons acting as parents, and that status could therefore not support a claim that this was the child's "home state." See § 14-13-103, 5 C.R.S. (1999)(Repealed July 2000, Ch. 320, sec. 1, § 14-13-101 - 403, 2000 Colo. Sess. Laws 1519)(defining "home state" as the state where the child lived with his parents, parent or person acting as parent, for at least six months). Moreover, I would reject E.E.B.'s declination-of-jurisdiction rationale, at least as understood by the majority to characterize any legislative determination of custody, without separately allowing a judicial assessment of the

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short of the six-month residence period, the court granted the mother's motion and ordered physical custody restored to her. On October 31, 2003, two weeks after the Missouri court had ordered that physical custody of the minor child be returned to his mother, the prospective adoptive parents filed for parental responsibilities in Jefferson County.

"best-interests" of the child, as declining to exercise jurisdiction over the question of custody altogether.[22] The shortcomings in that construction have been adequately exposed else where, see In re Clausen, 442 Mich. at 675, n.31, and most recently by the National Conference itself in expressly drafting the UCCJEA to more emphatically protect against any similar interpretation.

Although its purpose in doing so in this jurisdictional debate is not entirely clear to me, the majority also asserts that both the UAA and Missouri domestic law support Colorado's holding in C.C.R.S. that custody determinations based on a

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[22] To the extent that E.E.B. suggested that a declination of jurisdiction would nevertheless not have occurred if, upon consultation, the other state expressly denied any intent to decline jurisdiction, see E.E.B., 446 A.2d at 880, its holding would not support the broader proposition for which it is cited by the majority. In this case, the Colorado District Court actually did consult with the Missouri court and decided that the Missouri court did not intend to decline jurisdiction.

"best-interest" analysis by the courts are required after failed adoptions.[23] While the UAA, unlike either Colorado or Missouri law, limits to a handful of days the period within which a natural mother may unilaterally revoke her initial consent to adoption, it most certainly does not permit the courts to reassign custody away from a natural mother who had custody of her child before the placement, as long as the court finds a valid revocation of consent.[24]

[23] I do not agree with the majority's suggestion that section 19-5-104(8) offers support for the holding of C.C.R.S., see maj. op. at 15, and apparently neither did C.C.R.S. The "best-interests" custody determination mandated by section 19-5-104(8) is clearly limited to the situation in which parental rights have already been relinquished but clear and convincing evidence proves that such relinquishment was obtained by fraud or duress. See § 9-5-104(7) & (8). Much like the "best-interests" custody determination required by Missouri law following an illegal placement by a parent, see In re Baby Girl, 850 S.W.2d 64 (Mo. 1993), under such special circumstances, the legislature has clearly determined that automatic return of a child to the former parent would be inappropriate.

[24] The UAA provides for the child's care and custody after a failed adoption in a manner that carefully balances the natural parent's rights against the child's best interests. To that end, it describes a series of circumstances in which custody of the child reverts immediately to the

Similarly, Missouri would clearly not permit guardianship of a child to be granted to a third party, outside of a proceeding contemplating the relinquishment of parental rights.

Even a cursory review of Missouri law is enough to dispel the suggestion that it permits, much less requires, a "best-interest" hearing before returning custody to the mother under these circumstances. The statute and case law relied upon by the majority for its assumption that Missouri requires such "best-interest" custody determination following failed adoptions are expressly limited to the case of an illegal transfer of custody, which necessarily brings into question the continued fitness

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parent and those instances in which custody must go to someone other than the parent. See Unif. Adoption Act § 2-408, 9 ULA at 60-61. The UAA permits the court to issue an order providing for the care and custody of the child according to the child's best interest after consent is revoked or set aside only if the child was not in the mother's physical custody when placed for adoption or when the consent was given. Unif. Adoption Act § 2-408(f), 9 ULA at 61.

of the natural parent. See In re Baby Girl, 850 S.W.2d 64 (Mo. 1993) (construing Mo. Ann. Stat. § 453.110(1) (West 2004): "Illegal placement of children available for adoption").

In fact, the Missouri statute permitting the court to award custody to someone other than the parent if the court denies an adoption petition says nothing about "best-interest." See Mo. Ann. Stat. § 453.101 ("In the event that the juvenile court does not grant the adoption, the court may order that a guardian be appointed . . . ."). Significantly, Missouri would permit the court to appoint someone other than the parent as guardian after the adoption is denied only under specified circumstances, including where both parents failed to give required security, both parents are shown to be unfit or adjudged incapacitated, the minor is over fourteen years old and has no qualified parent, or both